IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RFA No. 955 of 1987
Date of decision : 10.1.2007.

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Parties Name

Smt. Tej Kaur

..... Appellant

vs.

The Land Acquisition Collector, U.T.,
Chandigarh.

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Pritam Saini, Advocate
for the appellant.

Sh. Deepak Sharma, Advocate
for the respondent.

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S.N. Aggarwal, J.

RFA No. 955 of 1987 (Smt. Tej Kaur vs. The Land Acquisition Collector, U.T. Chandigarh) and RFA No. 1143 of 1987 (Surjan Singh (deceased) through LRs vs. The Land Acquisition Collector, U.T., Chandigarh) are being disposed of by this common judgment. The facts are taken from RFA No. 955 of 1987.

The appellant was the owner of land measuring 12 Kanals situated in village Kumbra, Tehsil Kharar, District Ropar. The same

was acquired by the respondent for the construction of out fall sewerage for Chandigarh vide notification dated 19.1.1983 issued by the respondent under Sections 4 and 6 of the land Acquisition Act, 1894 (in short the Act, 1894). The Land Acquisition Collector announced the award on 4.5.1983 and awarded compensation @ Rs.30,000/- per acre. Unsatisfied with the award, the appellant filed a reference under Section 18 of the Act, 1894 and claimed compensation @ Rs.150/- per sq. yard. The case was contested by the respondent.

Issues were framed. The parties led the evidence. The learned Reference Court vide award dated 6.11.1986 awarded compensation @ Rs.35,000/- per acre. The solatium and interest were also awarded.

Dissatisfied, the said award was challenged by the appellant by filing the present appeal.

The submission of the learned counsel for the appellant was that as per the judgments of this Court passed in CWP No. 4768 of 1982 on 19.1.1983 and CWP No. 3569 of 1980 decided on 9.12.1980, the compensation was to be assessed as it was prevailing on 9.12.1980. It was further submitted that the appellant has proved Exhibits P-1 to P-3 for the sale of land of village Kumbra i.e. the village from which this land was acquired, according to which the price of land varied from Rs.90,000/- per acre to Rs.98,000/- per acre. These sale deeds were executed on 10.4.1980, 28.10.1980 and 7.9.1982. These were referred to in the judgment of the learned District Judge in paragraph 13 but these were not made the basis on

the plea that these sale deeds related to small pieces of land. On the other hand, learned Reference Court relied on Exhibit R-1, which was a copy of the judgment dated 2.9.1982 passed in LAC No. 82 of 19.10.1981. It related to the land of village Kambala.

Learned counsel for the appellant also made reference to the Division Bench judgment of this court reported as **Harchal Singh vs. The State of Punjab** 1991 PLJ 20, according to which the compensation was awarded @ Rs.1,75,000/- per acre for the land acquired in villages Mataur, Sohana, Kambali and Kambala. Hence, it was prayed that the compensation be awarded to the appellant in accordance with the judgment of this Court referred to above.

On the other hand, the submission of the learned counsel for the respondent was that the judgment of this Court cannot be relied upon as the appellant has claimed compensation @ Rs. 85,000/- per acre and therefore she cannot be awarded compensation more than what is claimed by her. It was also submitted that documents of sale instances proved by the appellant relate to small pieces of land and therefore, the proportionate cut has to be applied as per the judgment of the Hon'ble Supreme Court reported as **Viluben Jhalejar Contractor (dead) by LRs vs. State of Gujarat** (2005)4 Supreme Court Cases 789. It was also submitted that the respondent had acquired 5 acres of land, while the instances relied upon by the appellant related to the land measuring 7 Kanals 4 Marlas at the most.

These submissions have been considered. It has also come in the statement of Lal Chand, Patwari RW-1 that the land under reference situated in village Kumbra was about 2-1/2 Kms from

Sector 47, Chandigarh, while it was ½ Kms from Phase XI, Mohali (Sahibzada Ajit Singh Nagar) and that Chandigarh – Manali road passes adjacent to the acquired land. Obviously, therefore, the acquired land enjoyed a great potentiality and was more valuable. When the location of the land is examined in the context of the sale instances proved by the appellant, it is clearly made out that the market value of the acquired land was much more, than fixed by the Land Acquisition Collector or by the Reference Court and therefore, the land owners are to be compensated accordingly.

The appellant in the present appeal has claimed compensation @ Rs.85,000/- per acre, therefore, she cannot be awarded compensation more than what is claimed by her. As per the sale instance dated 28.10.1980 (Exhibit P-2) proved by the appellant, related to the land measuring 7 Kanals 4 Marlas and the price of land per acre was Rs.90,000/-. In the present case, the land acquired was 5 acres. Therefore, cut has to be applied although it may be nominal and the price of land in the present case is determined to be Rs.80,000/- per acre.

The appellant would also be entitled to solatium and interest as provided under the relevant provisions of the Act, 1894.

It was submitted by the learned counsel for the appellant that the possession of the land was taken by the respondent in the year 1960 and therefore, the appellant should be awarded interest from that date onwards.

This submission has been considered. It has no merits at all. The notification of acquisition of the suit land under Sections 4 and 6

of the Act, 1894 was issued on 19.1.1983, but as per the judgment of this Court dated 19.1.1983, passed in CWP No. 4768 of 1982, the prices were to be assessed prevailing as on 9.12.1980. Therefore, the appellant cannot be awarded interest prior to 9.12.1980. It is the notional date fixed by this Court as per the judgment referred to above, although the notification for acquisition was issued in January 1983. If the appellant was dispossessed prior to 9.12.1980, she may have another remedy of getting compensation/damages, but she cannot be awarded interest prior to the date of notification or the notional date fixed by this Court in the aforesaid judgment.

Therefore, the appellant is entitled to interest on the enhanced amount only with effect from 9.12.1980 onwards. The appellant is awarded solatium. He is also awarded interest @ 9% per annum on the enhanced amount of compensation with effect from 9.12.1980 for a period of one year and thereafter, he would be entitled to interest @ 15% per annum till the date of payment.

(S.N.Aggarwal)
Judge

10.1.2007.
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